IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **Crl.A.No.157-DB of 1998**

DATE OF DECISION: December 14, 2007

PATRAS @ BITTO ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

PRESENT: MR. A.S. TRIKHA, ADVOCATE FOR THE APPELLANT.
MR. S.K. HOODA, SR.DAG, HARYANA.

ASHUTOSH MOHUNTA, J.

This appeal has been filed against the judgement and order of sentence dated 10.8.1996 passed by learned Sessions Judge, Kurukshetra vide which the appellant-accused has been convicted under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.250/- and in default to further undergo R.I. for fifteen days.

Briefly the facts of the case are that on receipt of ruqa and MLR No.175/RK/94 about Shashi Bala (deceased), Ishwar Singh, ASI Police Station Pehowa recorded the statement of Unus Masih (complainant) that he had settled the engagement of his daughter, namely, Shashi Bala (deceased) with the accused-appellant, Patras @ Bitto. After few months the complainant came to know that the accused-appellant is not a man of good character and therefore, he broke up the engagement of his daughter with the accused-appellant and solemnized the marriage of his daughter Shashi Bala with Johan Masih son of Feroz Masih. A panchayat of their community

was also convened in this regard. The accused-appellant developed a grudge due to the break-up of the engagement.

Two days prior to the occurrence the deceased Shashi Bala accompanied with her father-in-law Feroz Masih and Bui, mother-in-law had come to the house of the Unus Masih. On 11.9.1994, at about 11.00 a.m. the complainant, father-in-law and mother-in-law of Shashi Bala were sitting in front of the complainant's house and were talking. Shashi Bala after taking a bucket had gone out to take water from the hand pump in the street which was at a distance of twenty paces. Unus Masih heard the voice of 'Mar dia-Mar dia' of her daughter. Then all three sitting in the house went towards the hand pump and saw that the accused-appellant, Patras @ Bittu had caught Shashi Bala by her hair and was pulling her from near the hand pump and was dragging her towards the house of Parkash Chand Jhinwar. Then the accused fell her on the ground and gave two blows with an axe on the back of head of Shashi Bala. On seeing the complainant, the deceased's father-in-law and mother-in-law, the accused-appellant Patras @ Bittu ran away from the spot with his axe. On coming near Shashi Bala, they saw that huge quantity of blood was oozing out of the head of Shashi Bala, her cut hairs were lying nearby and she had become unconscious. Shashi Bala was rushed to the Govt. Hospital at Pehowa by the complainant in an unconscious condition, where she was examined and due to her serious condition was referred to PGI, Chandigarh. On the basis of the statement of Unus Masih and opinion of the Doctor, FIR No.249 of 1994 under Section 307 IPC was got registered at Police Station Pehowa. Shashi Bala's father-in-law and mother-in-law took her to Chandigarh in a private vehicle, however, on the way Shashi Bala succumbed to her injuries.

Thereafter, during inquest proceedings vide Ex.PD it was intimated to the Police by the Medical Officer, Community Health Centre, Pehowa that Shahi Bala who was referred to PGI Chandigarh with head injuries has died on the way and the case was then converted to Section 302 IPC. Blood stained earth and the hair of Shashi Bala were picked up from the place of occurrence and were taken into possession vide Ex.PF and Ex.PF/3, respectively.

To prove the allegations, the prosecution examined PW1 Dr.Rajan Kohli, PW3 Rawal Singh, PW10 Unus Masih, PW11 Dr. Atul Arora, PW14 Feroz Masih, PW15 Ishwar Singh, PW16 S.I. Ram Chander. Report of Forensic Science Laboratory Ex.PX was also tendered in evidence in support of the case.

Statement of accused was also recorded under Section 313 Cr.P.C. in which he denied the occurrence and pleaded that he has been falsely implicated and blamed John Masih, husband of the deceased for having committed the crime. He further stated that he and Shashi Bala were in love with each other. He examined Manohar Masih in his defence as DW1.

PW1 Dr. Rajan Kohli, who was posted at Community Health Centre on the day of the incident and medico legally examined Shashi Bala stated that she was unconscious, blood was coming from the mouth, pupils were pin-point, non-reactive to light, and found the following injuries:-

> *"1. Incised wound 18 cms. x 2 cm on the right side of Parieo occipital region of scalp. Bone was cut and brain matter was coming out of the head. X-ray was advised. Fresh bleeding was present.*

2. Lacerated wound 4 cms x 1 cm skull deep on right side of occipital region of scalp. Clotted blood was present. Injuries was advised for x-ray."

The Doctor opined that the injury No.1 was caused by sharp weapon and injury No.2 was by blunt weapon. The Doctor also submitted that on Police request Ex.PC he opined the injury as dangerous to life and the deceased was referred to PGI, Chandigarh vide Ex.PC1. Thereafter vide Ex.PD, another ruqa was sent by the Doctor that Shashi Bala had died on the way. He further deposed that on police request Ex.PE, vide his endorsement Ex.PE/1, he opined that injury on the person of the deceased could be caused by Kulhari Ex.P1.

PW3 Rawel Singh has deposed that in his presence the accused-appellant made a disclosure statement that he had given the kulhari blow and the same has been kept concealed by him, which later on was got recovered from him.

PW10 Unus Masih, father of the deceased who was the eye witness of the incident has reiterated the version given by him at the time of lodging of FIR. It was stated by him that the accused bore grudge against his daughter on account of the fact that the engagement had been broken and that she was married with one John Masih. It was stated that on 11.9.1994, he alongwith his samdhies, i.e. father-in-law and mother-in-law of his daughter Shashi Bala was sitting outside their house and were talking, his daughter Shashi Bala went out in the street to fetch water from hand pump. At this stage he heard the voice of his daughter shouting "Maar diya-Maar diya" and he saw that the accused Patras @ Bittu had caught hold of

the hair of his daughter and gave two blows of an axe on the back of head of Shashi Bala. On receiving the injuries Shashi Bala became unconscious. Thereafter, Shashi Bala was removed to the hospital and while she was being taken to PGI, Chandigarh, she died.

The occurrence was also witnessed by Feroze Masih, father-in-law of the deceased Shashi Bala who has also deposed on the same lines as PW10 Unus Masih.

PW11 Dr. Atul Arora, who was posted as Medical Officer, L.N.J.P. Hospital, Kurukshetra and who had done post mortem examination on the body of the deceased has opined that the deceased died due to head injury which were sufficient to cause death in ordinary course of circumstances.

PW15 ASI Ishwar Singh has stated that on 11.9.1994, he received a ruqa Ex.PB alongwith MLR of Shashi Bala. On reaching the Community Health Centre, Pehowa he moved an application Ex.PC before the medical officer who vide his opinion Ex.PC/1 opined that injury on the person of Shashi Bala was dangerous to life and that Shashi Bala had been referred to PGI, Chandigarh.

PW16 SI Ram Chander has stated that he alongwith Unus Masih arrested the accused-appellant Patras. He further deposed that on interrogation in the presence of PW3 Ravel Singh and Bawa Masih the accused made disclosure statement Ex.PG that he had kept concealed the kulhari under a heap of wood in his house and could get the same recovered. Thereafter said kulhari Ex.P1 was also got recovered by him from the disclosed place which was taken into possession vide Ex.PG/2. He further deposed that an application Ex.PE was moved seeking the opinion from the

Medical Officer regarding whether the injury caused to Shashi Bala could be caused with kulhari to which vide Ex.PE/1 the Doctor opined '*Yes, the injury can be caused by this weapon*'.

The report of Forensic Science Laboratory, Madhuban Ex.PX was also tendered into evidence. As per the said report, blood was detected on the earth and hair of the deceased.

Learned counsel for the appellant has contended that it is highly improbable that the accused could inflict injuries to the deceased while three of her family members, i.e. her father, father-in-law and mother-in-law were present and were sitting just nearby to the place of occurrence. Learned counsel has further contended that there is also an inordinate delay in lodging the FIR. It is further argued that the accused-appellant has no motive to kill Shashi Bala as the accused-appellant and Shashi Bala were having an affair. Rather, it is the husband of the deceased, namely, John Masih who has murdered Shashi Bala. He further contended that mere recovery of kulhari at the instance of accused is of no consequence as in villages people usually keep kulharies in their homes.

Counsel for the State has submitted that while recording the statement to the Police PW10 Unus Masih and has categorically stated that on that fateful day he himself, PW14 Feroze Masih, father-in-law of the deceased and Bui, mother-in-law of deceased were sitting outside his house and the deceased went to the hand-pump installed in the street to fetch water which was at a distance of 20 paces. Only then they heard her cries and when they reached towards the hand pump they saw that the accused-appellant was holding her hair had thrown her down to ground and gave two blows with an axe on the back of head of Shashi Bala. On seeing them, the

accused fled away from the spot with the axe.

Counsel for the State has next argued that there was a clear cut motive to murder Shashi Bala as the accused was having a grudge against Unus Masih and his family members because the deceased was firstly engaged with the accused and thereafter on coming to know about the character of the accused and misrepresentation made by the accused that he is serving in Food Corporation of India compelled Unus Masih to break up all the relations with the accused and he married his daughter with John Masih. Several efforts were also made by the accused to again maintain the relation by convening panchayat meetings. Feeling insulted at the hands of the complainant and village panchayat the accused committed the murder of Shashi Bala. He further stated that had it been the husband of the deceased John Masih who could have murdered Shashi Bala then Unus Masih would be last person to save him.

Learned counsel for the State has further argued that the weapon used in the crime, i.e. kulhari was recovered from the possession of the accused. PW-3 Ravel Singh has very categorically stated in his statement that in his presence the accused-appellant made a disclosure statement that he had given the kulhari blow and the same has been kept concealed by him, which later on was got recovered from him. PW16 SI Ram Chander has also stated on interrogation in the presence of PW3 Ravel Singh and Bawa Masih that the accused made disclosure statement Ex.PG that he had kept concealed the kulhari under a heap of wood in his house and could get the same recovered. The disclosure statement was also signed by the accused. Thereafter said kulhari Ex.P1 was also got recovered by him from the disclosed place which was taken into possession vide

Ex.PG/2.

We have heard both the counsel for the appellant as well as the State at length.

The occurrence was witnessed by PW10 Unus Masih who is the father of the deceased Shashi Bala. He has deposed that Shashi Bala had initially been engaged with the accused Patras @ Bittu, however, when he came to know that the accused was not a man of good character, therefore, he broke up the engagement and got her married with John Masih son of Feroze Masih. The accused bore a grudge against the deceased because of the breaking of the engagement with Shashi Bala with him. He has further deposed that on 11.9.1994, at about 11.00 a.m. he alongwith the father-in-law and mother-in-law, namely, Feroze Masih and Bui respectively of Shashi Bala were sitting in a courtyard under a Shehtoot tree and were talking and in their presence his daughter Shashi Bala holding a bucket in her hand went in the street to bring water from the hand pump. Within two minutes of her going out, they heard a noise of her daughter yelling 'Maar diya-Maar diya' and when all three of them rushed towards the hand pump they saw that the accused had caught hold of his daughter Shashi Bala from her hair and was dragging her towards the house of Parkash Chand Jhinwar which was on the northern side of the hand pump. The appellant was armed with a kulhari. Shashi Bala had fallen on the ground and when she tried to get up by raising her head, the appellant gave her two kulhari blows on her head. Thereafter, the accused ran away with the kulhari from the place of occurrence. The entire occurrence was also witnessed by PW14 Feroze Masih and Bui, father-in-law and mother-in-law of Shashi Bala, respectively. Shashi Bala was immediately removed to the hospital and was

referred to PGI, Chandigarh. However, she succumbed to her injuries on the way. PW10 Unus Masih had given a detailed account of the manner in which his daughter was killed by the appellant. His testimony could not be shaken in the cross examination.

The occurrence was also witnessed by PW14 Feroze Masih, father-in-law of the deceased. He has also given a detailed graphic account of the manner in which Shashi Bala was killed by the accused. His deposition is similar to the statement made by Unus Masih PW10. He has also stated that when they saw the accused catching hold of Shashi Bala by her hair and throwing her on the ground, they raised an alarm but the accused had thrown her on the ground and while she was trying to get up she was struck by the accused on her head. This witness has also withstood the detailed cross examination and the defence has not been able to make any dent in his statement.

The ocular version of the incident as given by PW10 and PW14, Unus Masih and Feroze Masih, respectively is also supported by the medical evidence. Dr. Atul Arora performed the post-mortem examination on the dead body of Shashi Bala and the injuries found by him correspond to the injuries as stated by the eye witnesses. Dr. Atul Arora had deposed that the death in his opinion had occurred due to head injury. The injuries mentioned in the post-mortem report were ante mortem in nature and were sufficient to cause death in the ordinary course of circumstances. The Doctor has opined that injury could have been caused by axe. Apart from the above, the occurrence took place on 11.9.1994, at about 11.00 a.m. and the FIR was registered at 2.50 p.m. at Police Station Pehowa. The Special Report was received by the Judicial Magistrate Ist Class, Pehowa at 10.02

p.m. The contention of the counsel for the appellant that there is an inordinate delay in sending the Special Report to the Judicial Magistrate is without any merit as the deceased Shashi Bala was first taken to Government Hospital at Pehowa and was thereafter referred to PGI, Chandigarh as her injuries were serious. However, Shashi Bala succumbed to her injuries while on her way to Chandigarh. Her dead body was thereafter brought back. From the aforementioned events it is clear that there was no delay either in lodging the FIR or in sending the Special Report to the Judicial Magistrate.

In view of the aforementioned discussion, we have no hesitation in holding that Shashi Bala was murdered by the appellant Patras @ Bittu on 11.9.1994. The motive for committing the crime was that the engagement of Shashi Bala with the appellant had been broken of by her father because the appellant did not bear good moral character. The motive to commit crime was further strengthened by the fact that Shashi Bala was married to one John Mashi. It is because of this reason that the appellant killed Shashi Bala.

In view of the above, we find no merit in this appeal and the same is dismissed. The judgement and order of sentence dated 10.8.1996, passed by Sessions Judge, Kurukshetra holding the appellant guilty for the offence under Section 302 IPC and sentencing him rigorous imprisonment for life besides the fine is upheld.

(ASHUTOSH MOHUNTA)
JUDGE

December 14, 2007
Gulati

(MOHINDER PAL)
JUDGE